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## Letter Ruling 87-17: Future Interest not Subject to Estate Tax Where Inheritance Taxes Paid

December 3, 1987

You ask for a ruling on behalf of the Estate of ("decendent") on whether the decedent's interest in a marital trust on which inheritance taxes on future interests have been paid is subject to the Massachusetts estate tax under G.L. c. 65C. We rule that under St. 1975, c. 684, s. 83, the decedent's interest in the trust property is not subject to the Massachusetts estate tax.

The decedent died on February 20, 1987. Her late husband, ("husband") predeceased her on May 10, 1966. Under his will the husband left 1/4 of the residue of his estate in a trust for the benefit of the decedent. The trust provided for income or principal at the trustee's discretion to be paid to the decedent for her life, with the remaining trust property at her death to be distributed to the executors of her estate.

In 1972 the trustees of the husband's estate paid inheritance taxes on future interests in the trust, valuing the decedent's interest in the trust as a life estate with a vested remainder in the trust property at her death. They made this payment pursuant to G.L. c. 65, s. 14, which provides that any person entitled to a future interest in property may pay the inheritance tax before the tax is due, upon the value of the interest at the time of payment.

The Massachusetts inheritance tax, G.L. c. 65, applies to estates of decedents dying before January 1, 1976. The Massachusetts estate tax, G.L. c. 65C, enacted in 1975, applies to estates of decedents dying on or after January 1, 1976. In 1975 the Legislature also enacted transitional rules to avoid the imposition of both the inheritance tax and estate tax on the same property interest. Under St. 1975, c. 684, s. 83, where an inheritance tax on a future interest in property subject to a power of appointment has been paid under G.L. c. 65, s. 14, before the death of the holder of the power of appointment, the value of the future interest in the property is not subject to the Massachusetts estate tax. The issue here is whether the decedent's vested remainder interest in the trust property, on which the inheritance tax has been paid, is essentially the same as a power of appointment, so that under St. 1975, c. 684, s. 83, it is not subject to estate tax.

Although the decedent did not actually have an express power of appointment in the trust property, she nevertheless had full control over the disposition of the property at her death, which is the same control she would have had with a general power of appointment. When the trustees of the husband's estate paid the inheritance tax on future interests in the trust, they valued the decedent's interest in the trust as a life estate with a vested remainder in her estate and therefore the Department taxed the full value of the trust property.

We conclude that for purposes of St. 1975, c. 684, s. 83, the decedent's vested remainder interest in the trust property here is essentially equivalent to a general power of appointment within the meaning of Internal Revenue Code s. 2041 as amended and in effect on January 1, 1975. An inheritance tax on future interests in the decedent's trust property has been paid pursuant to G.L. c. 65, s. 14. It follows that the decedent's interest in the trust property is not subject to the Massachusetts estate tax.

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Very truly yours,  
Stephen W. Kidder  
Commissioner of Revenue  
December 3, 1987  
LR 87-17